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ALEXANDER L. STEVAS,
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NO. A - 529

IN THE

SUPREME COURT OF THE UNITED STATES

FEBRUARY TERM 1983

Herbert O. Jensen,

Petitioner,

v.

Winston Satran, Warden,
North Dakota State Penitentiary,
and
Edward J. Klecker, Director,
Department of Institutions,
State of North Dakota,

Respondents.

PETITION FOR APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

JURISDICTIONAL STATEMENT

Herbert O. Jensen, pro se
Box 1497 NDSP
Bismarck, N.D. 58502

QUESTIONS PRESENTED FOR REVIEW

1. Did the United States District Court, District of North Dakota, Southwestern Division, make an error by not allowing an evidentiary hearing to fully establish the facts of all the issues?

2. Did the United States Court of Appeals for the Eighth Circuit make an error regarding the following issues that Jensen had raised:

a) That Jensen was not allowed to subpoena and cross-examine witnesses at an evidentiary hearing.

b) That the North Dakota State Prison violated its own rules and regulations by giving notice of the alleged violation three days after the five day limit authorized by the Inmate Handbook.

c) That Jensen was unable to get any paint except through the express permission of, and the direct action of, either a Cell House Lieutenant or Captain.

d) That the Penitentiary violated its own rules and regulations by not giving Jensen a list of charges and penalties at the prison disciplinary hearing as prescribed by the Inmate Handbook.

3. Did the United States Court of Appeals for the Eighth Circuit make an error by deciding that the only time an inmate's incarceration time is affected by the loss of good time is <u>after</u> he has been given a parole release date? (emphasis added)

4. Did the United States Court of Appeals for the Eighth Circuit make an error by deciding that the prison

disciplinary board was unbiased because a prison officer, who sat on the board, also participated in submitting Jensen's incident report?

5. Did the United States Court of Appeals for the Eighth Circuit make an error by deciding that the prison disciplinary board did not make a mistake by refusing to disclose posted prison rules concerning inmate maintenance of assigned cells?

6. Did the United States Court of Appeals for the Eighth Circuit make an error by deciding that the prison disciplinary board had not ignored Jensen's argument that he had not lived in the cell in question for eight days prior to the issuance of the incident report?

7. Did the United States Court of Appeals for the Eighth Circuit make an error by deciding that the entire prison disciplinary procedure was not constitutionally infirm?

TABLE OF CONTENTS

	PAGE
Jurisdiction.....	1
Statement of the Case.....	2
Conclusion.....	11
Certificate of Service.....	13
Amendment 5.....	1a
Amendment 14.....	3a
Inmate Handbook.....	4a
N.D. Supreme Court Order.....	7a
U.S. District Court Order.....	10a
U.S. Appellate Court Order.....	13A
U.S. District Court Order.....	31a
U.S. Appellate Court Order.....	37a
Notice of Appeal.....	48a

TABLE OF AUTHORITIES

PAGE

STATUTES:

Title 28 U.S.C.S. 1254..... 1

Title 28 U.S.C.S. 1291..... 1

Title 28 U.S.C.S. 1331..... 1

Title 28 U.S.C.S. 2254..... 1

CONSTITUTION:

Amendment 5..... 2

Amendment 14..... 2

CASES:

Wolff V. McDonnell,

94 S. Ct. 2963 (1974)..... 1

OTHER AUTHORITIES:

North Dakota State Penitentiary

Inmate Handbook..... 2

JURISDICTION

This action is an appeal from an order of the United States Court of Appeals for the Eighth Circuit dated September 20, 1982.

The statutory basis for federal jurisdiction is believed to be Title 28 U.S.C.S. 1291, 1331, and 2254.

The notice of appeal was filed in the United States Court of Appeals for the Eighth Circuit on October 2, 1982.

The statutory provision believed to confer jurisdiction on this court is Title 28 U.S.C.S. 1254.

The case believed to sustain jurisdiction is Wolff V. McDonnell, 94 S. Ct. 2963 (1974)

This case involves violations of

rights secured by the Fifth and Fourteenth Amendments of the United States Constitution. (see appendix, page 1a)

This case also involves violations of rights secured by the North Dakota State Penitentiary's Inmate Handbook dated December 1978, "Inmate's Rights in the Disciplinary Process." (see appendix, page 4a)

STATEMENT OF THE CASE.

On October 14, 1980, Herbert O. Jensen, an inmate at the North Dakota State Penitentiary, was given an incident report for allegedly violating Code No. 152, "Destroying, altering, or damaging State property." (painting of a shelf on cell wall)

On October 17, 1980, Jensen

appeared before the prison adjustment committee. He asked that Board member, Steve Boulter, be removed, because he had delivered the incident report to Jensen and would therefore be biased. The request was denied.

Jensen then requested assistance from private counsel and/or staff counsel, but he was refused.

He then requested to know whether the infraction was serious or minor, because serious offenses may be sent to a District Court for a criminal charge. No answer was given to him.

He argued that he had been moved from the cell in question eight days prior to the issuance of the incident report.

In spite of Jensen's defense, the

prison adjustment committee found him guilty of the charge and sentenced him to the loss of one month's good time (10 days) and costs for cleaning or replacing of the shelf.

Jensen appealed the decision to the warden and the Director of Institutions, but he was denied by both.

On Nov. 26, 1980, Jensen filed a petition for a writ of habeas corpus with the Burleigh County District Court, South Central Judicial District, Bismarck, North Dakota, to restore the lost good time, claiming constitutional violations of due process and equal protection.

Jensen argued that he received the incident report three days after the five day limit prescribed in the Inmate Handbook; and that the incident report

did not contain a list of penalties or a statement of rights as prescribed in the Inmate Handbook.

On December 1, 1980, the Burleigh County District Court denied Jensen's petition for a writ of habeas corpus without an opinion.

On December 5, 1980, Jensen petitioned the North Dakota Supreme Court for a Writ of Habeas Corpus claiming constitutional violations of due process and equal protection.

He argued that the prison didn't have the right to take money out of his account to pay for the alleged damages; that he had not lived in the cell in question for eight days prior to the issuance of the incident report; that he had been denied the right to have

representation by outside attorney or staff counselor at the disciplinary hearing as prescribed in the Inmate Handbook; that the incident report had been delivered three days after the five day limit prescribed in the Inmate Handbook; and that he hadn't been informed of his rihts at the disciplinary hearing.

On December 15, 1980, Luella Dunn, Clerk of the North Dakota Supreme Court, denied the petition by stating that Jensen had been afforded due process. (see appendix, page 7a)

On December 29, 1980, Jensen petitioned the United States District Court for the District of North Dakota, Southwestern Division, Bismarck, N.D., for a writ of habeas corpus, claiming the previous constitutional violations.

He argued all of the previous stated violations, and in addition, he claimed that there was no written notice of the disciplinary committee's findings that had been given to him; and that what meeger written records had been given to him were not sufficient to enable him to have a proper review on appeal to the courts; and that the prison did not follow its own rules and regulations during the entire disciplinary process as required by the Inmate Handbook.

On January 14, 1981, the United States District Court denied Jensen's petition stating that he was not entitled to any relief. (see appendix, page 10a)

On February 13, 1981, Jensen

appealed to the United States Court of Appeals for the Eighth Circuit citing all of the previous arguments, and he also stated that he should have had an evidentiary hearing in the United States District Court.

On June 23, 1981, the United States Court of Appeals for the Eighth Circuit determined that Jensen had not been afforded a written decision by the prison disciplinary board; and that there had been inadequate responses by the defendants to Jensen's other claims. The case was remanded to the United States District Court for an evidentiary hearing. (see appendix, page 13a)

On January 6, 1982, Jensen sent a brief responding to defendants motion to dismiss. He asked for an evidentiary

hearing where he could cross-examine witnesses to establish the complete facts of all the issues in the case.

On January 29, 1982, the United States District Court, after receiving motions and briefs from both parties, but without holding an evidentiary hearing, once again denied Jensen's claims by stating that no material facts remained at issue, and that an evidentiary hearing would add nothing to the resolution of the matter. (see appendix, page 31a)

On February 10, 1982, Jensen once again appealed to the United States Court of Appeals for the Eighth Circuit listing all of the previous arguments, and also rebutting the District Court's opinion about the loss of good time not

affecting a person's incarceration time until after he receives a parole date.

On September 20, 1982, the Court of Appeals for the Eighth Circuit, while casting doubts, reluctantly agreed with the District Court's opinion, and denied Jensen's claims. (see appendix, page 37a)

On October 2, 1982, Jensen sent a Notice of Appeal to the Supreme Court of the United States to the United States Court of Appeals for the Eighth Circuit. (see appendix, page 48a)

The questions sought to be reviewed are so substantial that they require plenary consideration.

Jensen's constitutional rights of due process and equal protection, pursuant to the Fifth and Fourteenth Amend-

ments to the United States Constitution, have been violated by the prison disciplinary board, and the questions raised, especially those concerning the good time credits in relationship to the length of incarceration time, present serious issues which have never been decided by the Supreme Court of the United States.

CONCLUSION

For all the foregoing reasons, it is respectfully requested that this appeal be granted in favor of Jensen.

Dated this 10th day of January 1983.

Herbert O. Jensen

Herbert O. Jensen
Box 1497 NDSP
Bismarck, N.D. 58502

Subscribed and sworn to before me on this 10th day of January 1983.

Daryl D. Fischer
Notary Public

My commission expires on:
10/1/85

CERTIFICATE OF SERVICE

I, Herbert O. Jensen, being first duly sworn, affirms that on the 10th day of January 1983, he served A Jurisdictional Statement with Appendix by placing a true and correct copy in an envelope addressed to: Office of the Clerk, Supreme Court of the United States, Washington, D.C. 20543; Edwin F. Zuern, Special Assistant Attorney General, State Capitol, Bismarck, N.D. 58502; Robert D. St. Vrain, Clerk of Court, U.S. Court of Appeals for the Eighth Circuit, 1114 Market Street, St. Louis, Mo. 63101, and depositing the same, with postage prepaid, in the United States Mails at the North Dakota State Penitentiary, Box 1497,

Bismarck, North Dakota 58502.

Herbert O. Jensen

Herbert O. Jensen
Box 1497 NDSP
Bismarck, N.D. 58502

Subscribed and sworn to before me on this 10th day of January 1983.

Daryl A. Fischer
Notary Public

My commission expires on:
10/1/83